

section shall be at a rate or rates adjusted monthly to reflect the average rate for U.S. Treasury bills with maturities of not more than ninety-one (91) days during the preceding three (3) months.

(c) [Reserved]

(d) All unsecured claims of any category or class or priority described in paragraphs (a)(1) through (a)(10) of this section shall be paid in full, or provision made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class in full, distribution to claimants in such category or class shall be made pro rata. Notwithstanding anything to the contrary herein, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority classes outlined in paragraphs (a)(1) through (a)(6) of this section as the receiver believes are reasonably necessary to conduct the receivership.

Provided that the receiver determines that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.

(e) If the association is in mutual form, and a surplus remains after making distribution in full of allowed claims as set forth in paragraphs (a) and (b) of this section, such surplus shall be distributed to the depositors in proportion to their accounts as of the date of default.

(f) Under the provisions of section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), the provisions of this § 360.3 do not apply to any receivership established and liquidation or other resolution occurring after August 10, 1993.

[53 FR 25132, July 5, 1988, as amended at 53 FR 30667, Aug. 15, 1988. Redesignated and amended at 54 FR 42801, Oct. 18, 1989, and further redesignated and amended at 55 FR 46496, Nov. 5, 1990; 58 FR 43070, Aug. 13, 1993. Redesignated at 58 FR 67664, Dec. 22, 1993; 60 FR 35488, July 10, 1995]

§ 360.4 Administrative expenses.

The priority for *administrative expenses of the receiver*, as that term is used in section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), shall include those

necessary expenses incurred by the receiver in liquidating or otherwise resolving the affairs of a failed insured depository institution. Such expenses shall include pre-failure and post-failure obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the institution.

[60 FR 35488, July 10, 1995]

§ 360.5 Definition of qualified financial contracts.

(a) *Authority and purpose.* Sections 11(e) (8) through (10) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e) (8) through (10), provide special rules for the treatment of qualified financial contracts of an insured depository institution for which the FDIC is appointed conservator or receiver, including rules describing the manner in which qualified financial contracts may be transferred or closed out. Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(8)(D)(i), grants the Corporation authority to determine by regulation whether any agreement, other than those identified within section 11(e)(8)(D), should be recognized as qualified financial contracts under the statute. The purpose of this section is to identify additional agreements which the Corporation has determined to be qualified financial contracts.

(b) *Repurchase agreements.* The following agreements shall be deemed "repurchase agreements" under section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(v)): A repurchase agreement on qualified foreign government securities is an agreement or combination of agreements (including master agreements) which provides for the transfer of securities that are direct obligations of, or that are fully guaranteed by, the central governments (as set forth at 12 CFR part 325, appendix A, section II.C, n. 17, as may be amended from time to time) of the OECD-based group of countries (as set forth at 12 CFR part 325, appendix A, section II.B.2., note 12 as may be amended from time to time) against the transfer of funds by the transferee of such securities with a simultaneous agreement by

such transferee to transfer to the transferor thereof securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

(c) *Swap agreements.* The following agreements shall be deemed “swap agreements” under section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(vi)): A spot foreign exchange agreement is any agreement providing for or effecting the purchase or sale of one currency in exchange for another currency (or a unit of account established by an intergovernmental organization such as the European Currency Unit) with a maturity date of two days or less after the agreement has been entered into, and includes short-dated transactions such as tomorrow/next day and same day/tomorrow transactions.

(d) Nothing in this section shall be construed as limiting or changing a party’s obligation to comply with all reasonable trading practices and requirements, non-insolvency law requirements and any other requirements imposed by other provisions of the FDI Act. This section in no way limits the authority of the Corporation to take supervisory or enforcement actions, or to otherwise manage the affairs of a financial institution for which the Corporation has been appointed conservator or receiver.

[60 FR 66865, Dec. 27, 1995]

PART 361—MINORITY AND WOMEN OUTREACH PROGRAM—CONTRACTING

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- 361.11 Solicitation and awards for legal services.

AUTHORITY: 12 U.S.C. 1833e.

SOURCE: 57 FR 15004, Apr. 24, 1992, unless otherwise noted.

§ 361.1 Purpose.

(a) The purpose of the FDIC Minority and Women Outreach program, (“MWOP” or “Program”) is to ensure that firms owned by minorities and women are given the opportunity to participate fully in all contracts entered into by the FDIC.

(b) This part is issued by the Office of Equal Opportunity (“OEO”). Authority is derived from the Financial Institutions Reform, Recovery, and Enforcement Act (“FIRREA”) of 1989, title XII, section 1216(c), which requires the FDIC to prescribe regulations establishing and overseeing a minority outreach program ensuring inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the FDIC with public or private sector contractors.

§ 361.2 Policy.

It is the policy of the FDIC that minorities and women and entities owned by minorities and women shall have the maximum practicable opportunity to participate in contracts awarded by the FDIC.

§ 361.3 Definitions.

For the purposes of this part:

(a) *Minority and/or women-owned business* (“MWOB”) means firms at least fifty-one (51) percent owned and controlled by one or more minorities and/or women. In the case of publicly owned companies, at least fifty-one (51) percent of its voting stock must be owned and controlled by minorities and/or women. Additionally, the management and daily business operations must be controlled by one or more such individuals.

(b) *Joint venture (non-legal services)* means an arrangement in which twenty-five (25) percent or more of the duties are performed by the MWOB and the MWOB is compensated proportionally to its duties. Additionally, twenty-